Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

Linda C. Hawkins, Trustee
Hawkins Family Trust

Petitioner(s)

V.

Vastar Resources, Inc.;
Oklahoma Corporation
Commission

Respondent

On Petition For Writ of Certiorari
To The Oklahoma Supreme Court

Petition For Writ Of Certiorari

Linda C. Hawkins,
Trustee
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QUESTIONS PRESENTER FOR REVIEW

The lower state Courts show trend to support administrative authority, exercised to a degree not suggested by Legislation and otherwise prohibited by the Constitution.

Can a administrative body assume authority prohibited to it by the State and U.S. Constitutions? Without consent to the contrary can the administrative body nullify Petitioner's Constitutional and Statutory Protections?

Can the state uphold administrative order that conflicts with the U.S. Constitution and decisions of the Supreme Court of the United States?

Can administrative body sit over matters outside of its jurisdiction, which include any matter that the public interests are not directly involved, when objections and asserted rights are timely made, notwithstanding, case holding exist where mineral owner relinquished rights, that limit the jurisdiction of the administrative body, allowing the administrative body to sit out of its Constitutionally restricted jurisdiction ?

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CITATION ENTER IN CASE

In THE SUPREME COURT OF THE STATE OF OKLAHOMA, Petition for Certiorari denied, case 95,878, November 20, 2001.

In THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, Division III, AFFIRMED (Appeal from The Oklahoma Corporation Commission), September 8,2001. Not for official Publication.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Order of the Commission, Cause CD. 200001579, order No. 448282.

REPORT OF THE APPELLATE REFEREE September 28, 2000

REPORT OF THE ADMINISTRATIVE LAW JUDGE July 28, 2000

BASIS FOR JURISDICTION

Date of order denying discretionary review November 20, 2001
Statutory Provision include 28 U.S.C 1651; 28 U.S.C §1257; 42 U.S.C §1983; 28 U.S.C. §241, 242; 15 U.S.C.
1-7 et seq

PROVISIONS INVOLVED IN CASE

Amendment 5 & 14 U.S. Constitution
Supermecy Clause, Article VI, ¶2 U.S. Constitution
Article II, §2, 6, 7, 23, 33 Okl' Constitution
Article I, §1 Okl' Constitution
52 O.S. §87.1 (e)
Title 52 O.S. §570.9
Title 52 O.S. §570.14 (A)

STATEMENT OF THE CASE

Prior to any hearing, and continuingly asserted thereafter, Petitioner expressly asserted all pertinent rights prior to the administrative body assuming jurisdiction over Petitioner's private and Constitutionally protected rights. No rights were ever acquired or become vested by Respondent. The Respondent, Commission and court all acknowledged Petitioners asserted rights to no avail.

[Records page 158] PRE-HEARING CONFERENCE AGREEMENT, May 9, 2000, Cause CD No. 200001579.

1) Minerals are not for sale

2) Firmly assert Article 2, Section 23 (Okla. Const.);

full length of first paragraph in Title 52 O.S. 87.1 (e).

3) Object to the Commission sitting over any matters relating to private rights.

4) Reserve all pertaining jurisdictional, statutory and constitutional protections of both the U.S and Oklahoma Constitutions, including, but not limited to, the 14th Amendment to the U.S. Constitution and Title 52 O.S. 87.1

SEE APPENDIX 1.5

ARGUMENT

The Oklahoma Corporation Commission (Commission), State Courts and the Respondent all elude the Supermacy Clause and the Separation Of Powers mandate of the United States Constitution, in respects to Petitioner's asserted rights in regards to Petitioner's Constitutionally mandated protected mineral and correlative rights. The case indicated the Respondent and the State Courts claim disbelieve that Constitutional mandated Rights could be applied to the rights of a private persons when not waived.

However, the jurisdictional limitations of the administrative body are directly measurable by the Supermecy Clause and the Separation of Powers mandate of the Constitution. This Court in THOMPSON vs. CONSOLIDATED GAS UTILITIES CORP., 300 U.S. 58, 79 ¶3-80, issued controlling authority in that private ownership shall never benefit another private person under authority of law without consent or waiver of the owner.

This case specifically deals with rather or not a administrative agency (Commission), under claim of "exercise of the police power," can diminish Petitioner's Constitutionally mandated protections of mineral ownership and rights without consent.

The long term effect and ramifications of a administrative agency exercising authority prohibited by the Constitution is too vast to measure and such has been warned by the Court and the framers of the Constitution.

Respondent uses cases out of context of this case, to circumvent the Supermacy Clause and the Separations of Powers mandate of the Constitution. Specifically Respondent uses case(s) where there were no reservations, or otherwise open waiver, of Constitutiona protections prior to the administrative agency sitting over matters of private rights between the parties. (Such as trade of interests, sales of interest, Contractual relationship or profit outside of the expressed limits of the Conservational pooling mandate etc.). However, the Constitution was held not to have been violated when no assertions of rights are made. The contract issued or drafted by the administrative body was held to apply and such did not violate the Constitution when the "correlative (mineral) rights" owner waived their Constitutional and Statutory protections. ANDERSON vs. COPORATION COMMISSION, Okl., 327 P.2d 699, 700; ANDERSON vs. ELLISON, 285 F.2d 484, 485; RANOLA OIL CO. vs. CORPORTATION COMMISSION 752 P.2d 1116, 1116-1120. See ANDERSON - PRICHARD OIL CORP. vs CORP. COM'N, 241 p2d 363, 371-372.

This case, however, all jurisdictional rights were expressly asserted prior to Commission sitting out of its primary and Constitutional limited authority and jurisdiction then over private matters between two owners in which the public interest would not be changed or affected regardless of the outcome. (Emphasis Added).

In spite of the asserted rights by Petitioner reaching both the Supremacy Clause and Separation

of Power mandate, the administrative order provided no means for Petitioner to remain clothed with the mandate of the Constitution for the full length of any production. The said order was drafted in such manner as to cause Petitioner to waiver Constitutionally protected rights. See Record page 199-217.

This administrative agency has no granted authority under the Constitution, or otherwise, to compel, under the Color of Law, the sale of ownership or the waiver of Constitutional mandated protections and require Petitioner to become a joint or co-partner with Respondent Vaster. This compels Petitioner to become liable to third person's or the public for neglect or actions of Respondent, requires the sale of ownership of correlative mineral rights, and/or straight waiver of Constitutional protections. All of which is not the intent of the Constitution nor Legislation especially by an administrative body.

"Correlative mineral rights" is the term used to specifically define Petitioner's private proportion of Constitutionally protected mineral ownership in a Common Source Of Supply(s).SAMSON RESOURCES CO. vs. CORP. COM'N, 702 P.2d. 19,22 [1].

Private rights or matters include any matter in which the publics interests are not directly an issue which the Commission has no jurisdiction including the trade of interests, sale of interests, or contractual relationship to any degree beyond expressed limits in Title 52 O.S §87.1(e). ATLANTIC RICHFIELD CO. vs. TOMLINSON, 859 P2d 1088, 1095-1096;

SAMSON RESOURCES CO. vs. COPR, COM'N, supra, at pg. 23 [2]; PETER FOX BREWING CO. vs. SOHIO PETROLEUM; 189 F. Supp. 743,750; Article 7, §7, Okla. Const.; LECK vs. CONTINENTAL OIL CO., 800 P2d 224, 226 (Okl., 1989); MARATHON OIL vs. CORPORATION COM'N 910 P2d. 966, 969.

While the Commission has no jurisdiction over purely private matters or rights in which the public's interest are not directly involved, the Commission is required by Legislation and the Constitution to protect all other non-drilling owner's mineral/correlative rights. Title 52 O.S. 87.1(e).

Inconsistency of federal law in state level stems from wide variety of state holdings regarding Constitutional protected mineral rights. The majority are product of the "Constitutionally protected mineral estate and correlative rights owner" waiving jurisdictional requirements and Constitutional limitations of the administrative body, which then, the said body sits over matters such as sale and other private matters between the parties.

Eventhough done in "waiver of jurisdictional rights" cases the Respondent here holds the apparent position that the administrative agency, in all cases, has been granted the authority under the "exercise of police power" to order property ownership to be taken from private person and given to another and/or to remove private person's Constitutional protections. See State court holding Appendix 1.2; Record pg. 119-217.

This case requires that State Legislation be

exercised fully as expressed in Title 52 OS 87.1(e), and exercised within the limits set by the Constitution and mandatory authority of this Court. Thus, no waiver exists.

The United States Supreme Court many times warned against the practice now exercised by the State. THOMPSON vs. CONSOLIDATED GAS UTILITIES CORP., supra.

On the other hand, however, other state holdings hold true to the requirements set by this Court in THOMPSON when the correlative mineral owner waived no Constitutional protections. ATLANTIC RICHFIELD CO. vs. THOMLINSON, supra, at 1095 [5,6], [7], [8-10], [11]; WARD vs. CORP. COM'N, 501 P2d 503, 507-508 (Articles 2, §23, Okla. Const.)

In cases without waiver of Separations of Powers, Supremacy Clause, or other Constitutional mandate the State held that once the mineral owner is barred their right to dill, under the spirit of conservation, that they are intitled to their share of gross production, and that the drilling/capturing person(s) no longer could keep its full capture. See ATLANTIC, supra. This solution allows non-drilling owners to remain clothed with the mandate of the Constitution and not allow the drilling of unnecessary wells.

Legislation in its duty of issuing its intent did so where the mineral/correlative rights owner who was state prohibited to exercise right to drill, and waived or sold no rights, would receive its full correlative share and rights. The drilling person also received the right to recover some of its cost from non-drilling owner's share of gross

production. However Legislation held true to the mandatory authority of this Court , and the State Constitution (Article 2, §23) and U.S. Constitution, Amendment 5 & 14, by prohibiting profit without consent from the correlative mineral rights owner. Title 52 O.S. §87.1(e). See ATLANTIC, supra.

Respondent contends under the exercise of police power that administrative authority unrestrictively can grant a private person another private person's interests, or profit, without consent (Art. 2, § 23, Okl. Const.), and/or nullify the right to remain clothed with the Constitution, notwithstanding, that this Court and state holdings have issued to the contrary. See WARD, supra.

Protection of Petitioner's correlative rights is required by Legislation and the Constitution upon the point Petitioner is barred from exercising the right to drill. At such point the administrative agency had no discretionary options at all and must protect Petitioner's full share. ATLANTIC supra. at 1095 [5,6], [7]; Title 52 O.S. §87.1(e).

Under the Conservation Law (Title 52 O.S. §87.1(e)) the loss of capture that drilling person comes to acquire must be distributed to the rightful owners is not a violation of the due process mandate the Constitution when others are prohibited to drill. ANDERSON - PRICHARD OIL CORP. vs. CORP. COM'N, 241 P2d 363, 371-372; ATLANTIC supra, at 1095-1096 [5,6], [7], [11].

Arbitrary and inconsistent application of federal requirements by State is because no holding exist to define the point, in a case's time line, that rights become permanently vested to one and waived by

another. (Emphasis Added). This case however, has consistent assertions of rights and, thus, has no waiver point in the case.

This Court has held, contrary to Respondent, that action taken under the police power cannot disregard the mandate of the Constitution. PANHANDLE EASTERN PIPE LINE CO. vs. STATE HIGHWAY COM'N 294 U.S. 613, 619, 621, 622; MARATHON, supra; Appendix 1.2,¶14,15.

State legislation drafted Conservational measures within the mandatory authority of the Supreme Court and within the mandate of the Constitutional 5th & 14th Amendment, and its State constitutional counterpart Article 2,6,7,23,33; by its expressed intent of Title 52 O.S. §87.1 (e), notwithstanding, the numerous out of context state case holdings in which the said Conservational mandate was applied, without objection to private person's correlative/minerals rights, to a degree outside of the Suprmecy Clause, Separation of Powers mandate, and mandatory authority of this Court. See THOMPSON, supra.

Legislation required pooling of owners but does not grant ownership to be taken from one private person and give to another, does not prohibit production and commerce rights of non-drilling owners, does not grant profit, does not deny non-drilling owner right to remain clothed under the Constitution. 15 U.S.C. §1-7 et sea., 42 U.S.C. §1983; KEIZOR vs. SAND SPRINGS RY CO., 861 P2d 326, 328.(Emphasis Added).

Legislation, pursuant to its Separation Of Powers duty, expressed its "pooling" mandate that no

owner can exercise their right to drill unless at drilling person are entitled to no profit from other owners (not to be confused with Leasing, selling or consenting owners, where as, the drilling person does not acquire such interest under the Color Of Law but rather by consent of non-drilling owner); that drilling person(s) are entitled to non-drilling correlative mineral rights owner's share of production until cost (actual) are paid and that the Commission must protect the "correlative right " of the non-drilling owner. Title 52 O.S. § 87.1(e),

Other State Legislation also drafted within the mandatory authority of this Court 52 O.S. § 570.14 "District Courts, not a administrative agency, has sole and exclusive jurisdiction to determine the entitlement of any owner in a well to 1) It's share of proceeds from production ***" reflect lack of jurisdiction to said administrative body over private rights.

Without waiver to the contrary the administrative Commission has no authority beyond expressed Legislative intent and the Separation Of Powers mandate. U.S. Constitution, Aritile 1-3.

The ramifications of an administrative body exercising, without consent, authority not granted to it (Art 7, 7, Okl. Const.) far exceeds this case and tends to dissolve the integrity of the court system and the Constitution itself, notwithstanding, defeat the Constitutionally upheld Conservation Laws expressed in Title 52 O.S. § 87.1 (e).

This Court has held that petitioner is Constitutionally entitled to Legislative expressed specific mandate FUENTES vs SHEVIN, 404 U.S.

67, 86, "Fourteenth Amendment's protection of property does not safeguard only rights of undisputed ownership but extends to any significant property interest including "statutory entitlements". TITLE 52 O.S. §87.1(e), 52 O.S. §570.14.

The ramifications of allowing administrative agency to sit out of it Constitutional restraints are already evident by the lower court's lack of ability to expressly quote controlling portions of Legislative mandate in Title 52 O.S. §87.1. And then of course show the specific reasons the said quoted portions of Legislative mandate does not apply to Petitioner (Emphasis Added). See September 28, 2001 holding of the State Court. (Appendix 1.2)

Not to expressly address Legislative mandate asserted by Petitioner, with specific reason as to why or why not expressed language does or does not apply, including all asserted Constitutional mandated protections, renders the state exhaustion process a miscarriage of justice at minimum. 42 U.S.C §1983 et. seq., 18 U.S.C. §§241, 242; 15 U.S.C. §1-7 et seq., Amendment 5,14, U.S. Constitution.

Nevertheless, Constitutionally protected Legislative mandate has been drafted within the directives set by the Court and sanctioned by the Constitution regarding Petitioner's Constitutionally protected correlative/mineral rights and Petitioner's commerce and production rights. The state process show "non-compliance" although required by Supreme Court holdings when it comes to reserved Constitutional rights. And further

shows open opposition to United States Supreme Court holdings, the Supermacy Clause, and the Separation of Power mandate of the Constitution itself. U.S Constitution, Article 1- 3; Article VI, ¶2; TITLE 52 O.S. §§570.9, 570.14.

CONCLUSION

Therefore, Petitioner asserts all Rights and waives none and does Petition that the writ issues because of the defeat and destruction of the Constitution is evident in this case.

That the Writ should be issued by this Court to promote uniformity and consistency of Constitutional mandate in the state and in its administrative agency(s) where full Constitutional mandated protections have been assured, asserted and reserved.

That the Writ should issue, whereas, the state had taken opposition and/or non-compliance to the authoritative holdings and requirements of this Court.

And that the Constitution as old or young as it is this day, should still be held to the Supermacy mandate (Article VI)., the Separation Of Powers mandate (Articles I-III), and the Due Process of Law mandates (Amendment 5 & 14), in all areas where property rights may be transferred to another

private person by authority or order under the Color Of Law.

Separation of Power mandate and Legislation (Title 52 O.S § 87.1(e)) expressly define the outcome of any pooling order when the administrative body receivers no waiver of its jurisdictional and Separation of Power limits. Nor acting under the Color of Law and claim of police power can the administrative body, and persons acting in cooperation therewith, circumvent the mandated rights, privileges and immunities secured by the Constitution. (Title 42 U.S.C. §1983). The administrative agency without waiver or consent has no discretionary authority to require private sale of interest or require loss of Constitutional mandated protections guaranteed to the property owner of the mineral and correlative rights. Legislation expressly defines the outcome of Conservational pooling without waiver of the Separation of Powers and Constitutional limits of the administrative body to no value in the state court holdings. (Appendix 1.2).

Date: February 15, 2002

RESPECTFULLY SUBMITTED,

_____

PETITIONER

APPENDIX 1.1

SUPREME COURT
STATE OF OKLAHOMA
IN THE SUPREME COURT OF THE UNTIED STATES OF OKLAHOMA

Nov. 20, 2001
Tuesday, November 20, 2001
JAMES W. PATTERSON
CLERK

Case No. 95,878

Linda C. Hawkins, Trustee Hawkins, Trustee Hawkins Family Trust v. Vastar Resources, Inc.
Petition for certiorari is denied.
CONCUR: Hargave, C.J., Waltt, V.C.J., Hodges, Lavender, Kauger, Boundreau, Winchester, JJ.
CONCUR IN RESULT: Opala, J.
I would amend the Court of Civil Appeals opinion to Provide procedural instructions for the post-remand hearing on Vastar's counsel fee award.
CONCUR IN PART; DISSENT IN PART: Summers, J. (joins Opala, J.)

R. Hargave
CHIEF JUSTICE

S/R Hargrave
CHIEF JUSTICE

APPENDIX 1.2

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA
DIVISION III

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
SEP. 28 2001
JAMES W. PATTERSON
CLERK

LINDA C. HAWKINS, individually, and as TRUSTEE, HAWKINS FAMILY TRUST,
Respondent/Appellant,
vs.
VASTAR RESOURCES, IN Case No. 95,878
Applicant/Appellee.
APPEAL FROM THE OKLAHOMA CORPATION COMMISSION

AFFIRMED
Linda C. Hawkins,
Wilburton, Oklahoma Pro,se.

John R. Reeves,
J. Matthew Thompson,
MOCK, SCHWABE, WALDO, ELDER,
REEVES & BRYANT,
Oklahoma City, Oklahoma, For Appellee.

OPINION BY CAROL M. HANSEN, CHEF JUDGE:

¶1 Appellant, Linda C. Hawkins, individually and as Trustee, Hawkins Family Trust (collectively Hawkins), appeals from an order of the Oklahoma Corporation Trust Commission (Commission) granting a forced pooling application by Appellee, Vastar Resources, Inc. (Vastar). We find Commission had jurisdiction to order Haskins' mineral interest pooled and that its process in doing so was constitutionally correct. We affirm.

¶2 In its application, Vastar requested Commission enter an order "pooling the drilling rights and fixing the determining the equities with respect thereto" for various separate common sources of supply in the drilling and spacing units formed in section 7, Township 4 North, Range 20 East, Latimer County, Oklahoma. Vastar also asked that it, or someone recommended by it, be designated operator for drilling and development f the units formed. This was a "cleanup" pooling request pertaining particularly to Hawkins. Commission had issued a previous general pooling order naming Vastar as operator.

¶3 At the hearing before Commission's Administrative Law Judge (ALJ) on Vastar's presents application, Vstar's expert witness testified Vastar had attempted, but was unable, to reach an agreement with Hawkins on pooling her interests. Vastar had offered Hawkins the options contained in Commission's previous pooling order for Section 7, *i.e.* participation in drilling of the proposed well, or a choice of three different combinations of cash bonus and royalty. Vastar's witness further testified

the options were based on fair market value of leasing activity in that area and explained the estimated costs of drilling.

¶4 Hawkins did not, and does not, dispute that testimony of Vastar's witness. She instead asserted legal disputing Commission's jurisdiction and the constitutionality of Commission's pooling orders. She argued Commission lacked jurisdiction because pooling her mineral interest concerned "purely private matters in which public interests are not involved." She further argued Commission would have jurisdiction to pool her interests only if she consented to her interests being pooled.

¶5 The ALJ recommended Commission order Hawkins' interest pooled with the same options contained in the previous order. The ALJ's report summarized and rejected by Commission in several previous proceedings in which Hawkins was a party.

¶6 Hawkins' appeal of the AJL's report was referred to the Oil and Gas Appellate Referee, whose report affirmed the ALJ's report. In issuing its pooling order Commission adopted the findings and recommendations of the ALJ, as recommended by the Referee. Hawkins appeals from Commission's pooling order.

¶7 The appellate standard of review on appeals from order of Commission is set forth at Oklahoma Constitution, Art. IX, §20:

> ...The Supreme Court's review appealable orders of the Corporation Commission shall be judicial only, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the

> United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts. In all other appeals from orders of the Corporation Commission the review by the Supreme Court shall not extend further than to determine whether the Commission has regularly pursued its authority, and whether the findings and conclusions of Commission are sustained by the law and substantial evidence...

¶8 We share both Vastar's assessment that "it is somewhat difficult to follow the legal argument presented by [Hawkins] in her Brief", and its conclusion that it appears the main premise of Hawkins' appeal is that it is unconstitutional for Commission to force pool her interests without her consent. It appears she also reiterates her assertion before Commission that without such consent she is entitled to participate in the proposed well without paying any of the costs before drilling. We find Hawkins' contentions, as we understand them, clearly without support.

¶9 Commission's authority to order "force" pooling of mineral interests is derived statutorily from 52 O.S. Supp. 1993 § 87.1 (e), which provides, in pertinent part:

> ...Where however, [to or more separately owned tracts of land or undivided interests are embraced within an established spacing unit] such owners have not agreed to pool their interests and where one such

> separate owner has drilled or proposes to drill a well on said unit to the common source if supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in spacing unit as a unit.

¶10 Contrary to Hawkins' contention, Constitutionality of forced pooling pursuant to § 87.1 has long since been decided in Oklahoma law, and has repeatedly been upheld under constitutional attack. In an opinion cited by Hawkins, *Anderson v. Corporation Commission,* 1958 OK 38, 327 P2d 699, the Supreme Court expressly held § 87.1 was not in conflict with provisions of the state and federal constitutions respecting property rights not being taken for private use nor without due process of law.

¶11 In *Anderson,* Anderson was, as Hawkins is here, owner of a separate interest in a spacing unit, and was the only owner that had not agreed to a development plan for the unit. Commission authorized drilling of a well, set the terms of participation, and ordered that if Anderson had not made an election within thirty days he would be presumed to have elected to take a leasehold bonus rather than participate. The Supreme Court affirmed Commission's order.

¶12 The *Anderson* Court noted that it had on several previous occasions held that unitization and pooling statues were constitutional as the proper

exercise of the state's police power. The Court went on to state:

> ... The order complained of did not constitute a taking of property of Anderson in any manner. It granted him a well on Ellison's property, but on conditioned that certain requirements were met.
>
> ... That he was allowed to share in the production or to receive a bonus instead of that participation was a grant to him at the expense of Ellison merely because of the recognition of correlative rights.
>
> ... Both were forced to cooperate for the benefit of both and for the protection of the public generally.

Anderson, at 702.

¶13 Hawkins cites no legal authority contrary to *Anderson.* Although she purports to cite cases which support her positions, she fails to demonstrate how any of those cases apply here. Mere assertion of legal principles, even if otherwise correct, is of no avail if circumstantially irrelevant. We find *Anderson* dispositive of Hawkins' jurisdictional and constitutional contentions regarding Commission's right to require her to pool her interests with that of others in the drilling and spacing units.

¶14 Hawkins is equally unsuccessful in making an argument that § 87.1 applies only to interest owners who agree to pooling. She seems to ignore the express terms of that section, as quoted above, which mandates that Commission, "to avoid the drilling of unnecessary wells, or to protect correlative rights", require pooling where owners

have not agreed to pool their interests. Section 87.1 makes no distinction as to differing rationales for not agreeing to pool. We have noted that under *Anderson* such forced pooling is a proper exercise of the state's police power for the benefit and protection of both the owners and the public generally. Hawkins' assertion that Commission may not exercise jurisdiction over her interests without a waiver of her constitutional rights is contrary to the clearly expressed, and constitutionally sound, legislative purpose of § 87.1.

¶15 Finally, as to the last of Hawkins' contentions, it is well settled that Commission may order interest owners, electing to participate in drilling of a well, to pay his or her proportionate share of costs before drilling. Hawkins' position is that because she refuses to consent to pooling she is entitled to have her proportionate share of costs deducted from her proportionate share of production, if any, with Vastar being able to recover costs through a statutory lien under § 87.1. Further, it seems she argues § 87.1 only allows the operator to recover the costs of drilling from production, with no right to additional production as profit.

¶16 As before, Hawkins' position is inconsistent with the language and purpose of § 87.1 and finds no support whatsoever in Oklahoma law. Under Hawkins' theory, even if the § 87.1 lien was applicable, virtually the entire risk of loss would be on the operator, Vastar. Section 87.1 does provide for a lien upon the mineral leasehold estate or rights owned by other owners, and upon their share of production, but common sense dictates that if there is no production, the lien is essentially worthless.

¶17 In *Ranola Oil Co. v. Corporation Commission,* 1988 OK 28, 752 P.2d 1116, the Supreme Court held the purpose of forced pooling was to "equalize the risk of loss by forcing all of the oil and gas interest owners to choose in advance whether they will share in both the benefits and risks of oil and gas exploration."
Implementation of § 87.1 to require such a choice is a constitutional exercise of the police power. *Id.,* at 1119.
¶18 Where interest owners elect not to take a real risk by paying their proportionate share before drilling, it would be inequitable to allow those owners to share in the rewards of development. *Id.,* at 1120. Hawkins' self-serving interpretation of §87.1 would render it meaningless and defeat its very purpose. No operator would assume all risk of exploration with no hope of making a profit. As a result, one of this state's most valuable resources would be left fallow, a result contrary to our public interests.
¶19 Hawkins' contentions are, as a matter of law, without merit. Hawkins has not contended that Commission's order was unsupported by substantial evidence. The record reveals that it was. Accordingly, Commission's order is AFFIRMED.
¶20 Simultaneously with filing its Answer Brief, Vaster filed a Motion to Dismiss and Request for Sanctions. Vaster's argument for dismissal of Hawkins' appeal was essentially that because the issues here had been unsuccessfully raised either by or on behalf of Hawkins on three pervious occasions, the present appeal was frivolous. The Supreme Court deferred action in Vastar's motion

until the decisional stage. The basis of Vastar's motion for dismissal is not one recognized under Supreme Court Rule 1.6(c)(1). For that reason its motion to dismiss is DENIED.

¶21 Vastar also asks that it be awarded appellate attorney fee in accordance with 20 O.S. 1991 § 15.1, which provides:

> On any appeal to the Supreme Court, the prevailing. Party may petition the court for an additional attorney fee for the cost of the appeal. In event the Supreme Court or its designee finds that the appeal is without merit, any additional; fee may be taxed as costs.

¶22 In *TWA/REDA Pump v. Brewington,* 1992 OK 31, 829 P,2d a5, the Supreme Court defined those appeals the Legislature sought to deter by §15.1 as those which have absolutely no legitimate legal or factual basis and the result is obvious. To determine if an appeal is frivolous for the purposes of §15.1, we must look to the record as a whole, and any doubt on that point should be resolved in favor of the appellant. *Id.,* at 23.

¶23 We find an award of appellate attorney fees to Vastar is justified. If not for what appears to be plain obstinacy, Hawkins had information available to her long before this appeal which should have convinced her she had absolutely no legal basis for her contentions. The record reveals Hawkins has been associated with at least four previous appeals in which substantially the same arguments she raises here have been categorically rejected. Each of the four were decided by unpublished opinions of the Court of Civil Appeals.

¶24 In the first three appeals – No.'s 87,885; 89,249 and 89,958 – the appeals were actually brought in the name of Hawkins' lessee, but the leases were executed after the pooling orders there. Hawkins did, however, appear *pro se* before Commission in support of the lessee's contentions, which were substantively her contentions here. In the first two of these cases the Petition for *Certiorari* was denied without dissent and mandate was issued in March 1998. In the latter case, no Petition for *Certiorari* was filed and mandate was issued in October 1998.

¶25 While we recognize these unpublished Court of Civil Appeals opinions have no precedential authority, they do clearly point out to Hawkins the total lack of merit of her appellate contentions, with Oklahoma Supreme Court citations particularly supporting the constitutionality of Commission's pooling orders. Additionally, the record shows the reports of Commission's ALJ's dealt extensively with the issues Hawkins now raises again and that Hawkins appeared in those matters.

¶26 More importantly, however, Hawkins was the appellant in the fourth and last appeal, No. 93,275. The issues there were again substantively the same as the issues she raises here. In that appeal, as it was in Appeal No. 87,885, *Anderson* was cited for the opposite position taken by Hawkins as to constitutionality of Commission's forced pooling orders. The Court of Civil Appeals – in No. 93,275 – also found *Anderson* to be dispositive of the issues Hawkins raised and explained its rationale for that conclusion in great detail. The Supreme Court unanimously denied Hawkins' Petition for

Certiorari, as it had in the other appeals where Hawkins was involved.

¶27 The Court of Civil Appeals opinion in 93,275 was handed down in April 2000. *Certiorari* was denied in June 2000. Hawkins did not file a motion for rehearing and mandate was issued on February 2, 2001. Hawkins filed her Petition in Error in this case on February 20, 2001.

¶28 The record established that when Hawkins filed her Petition in Error here, she was aware the legal positions she propounded had been clearly and repeatedly rejected by our appellate courts. While the relevant Court of Civil Appeals opinions did not have precedential effect, they unequivocally, to all but the most jaundiced reader, established that she could have no reasonable expectation of success in her appeal. It had been brought to her attention over and over that her arguments were wholly without merit.

¶29 The record also shows Hawkins was aware that appellate attorney fees were a possibility because they had been requested and denied in Appeal No. 93,275. She nonetheless persisted here after mandate in that appeal had been issues. Hawkins may not be excused because she is not schooled in the law. Litigants proceeding *pro se* are charged with the responsibility of complying with the rules of pleadings, evidence and appellate practice. *Funnel v. Jones* 1985 OK 73,737 P.2d

¶30 Vastar's request for an award of appellate attorney fees pursuant to 20 O.S. 1991 §15.1 is GRANTED. This matter is therefor REMANDED to Commission for determination of reasonable attorney fees in accordance with *State ex rel. Burk*

v. Oklahoma City, 1979 OK 115, 598 P2d 659. *See, Public Service Co. of Oklahoma v. Norris Sucker Rods,* 1995 OK CIV APP 101, 917 P.2d 992. BUETTNER, P.J., concurs; GARRETT, J., concurs in result.

Appendix 1.3

CONSTITUTION OF THE UNITED STATES OF AMERICA

Article VI

[2] This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United Sates and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person with its jurisdiction the equal protection of the laws.

CONSTITUTION
OF THE
STATE OF OKLAHOMA

ARTICLE I. §1. Supreme law of land

The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.

ARTICLE II - BILL OF RIGHTS

§2. Inherent rights

All persons have the inherent All have inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their owned industry.

§ 6. Courts of justice open - Remedies for wrongs - Sales, denial or delay. The Courts of justice of the State shall be open to every person of justice of the Sate shall be open to every person, and speedy and cretin remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial delay, or prejudice.

§7. Due process of law

No person shall be deprived of life, liberty, or property, without due process of law.

§23. Private Property - Talking or damaging for private use

No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except of private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law.

§33. Effect of enumeration of rights

The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by, the people.

Appendix1.4

OIL AND GAS

TITLE 52 O.S. §87.1(e)

(e) The drilling of any well or wells into any common source of supply for the purpose of producing oil or gas therefore, after a spacing order has been entered by the Commission covering such common source of supply, at a location other than that fixed by said order is hereby prohibited. The drilling of any well or wells into a common source of supply, covered by a pending spacing application, at a location other than that approved by a special order of the Commission authorizing the drilling of such well is hereby prohibited. The operation of any well drilled in violation of any spacing so entered is also hereby prohibited. When two or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission , to avoid the drilling of unnecessary wells, or to protect correlative rights, shall upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit. The applicant shall give all the owners whose addresses are known or could be known through

the exercise of due diligence at least fifteen (15) days' notice by mail, return receipt requested. The applicant shall also give notice by one publication, at least fifteen (15) days prior to the hearing, in some newspaper of general circulation published in Oklahoma County, and by one publication, at least fifteen (15) days prior to the date of the hearing, in some newspaper published in the county, or in each county, if there be more than one, in which the lands embraced within the spacing unit are situated. The applicant shall file proof of publication and an affidavit of mailing with the Commission prior to the hearing. All orders requiring such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or received without unnecessary expense his just and fair share of the oil and gas. The portion of the production allocated to the owner of each tract or interests in a well spacing unit formed by a pooling order shall, when produced, be considered as if produced by such owner from the separately owned tract or interest by a well drilled thereon. Such pooling order of the Commission shall make definite provisions for the payment of cost of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commission shall determine the proper costs after due notice to interested parties and a hearing thereon. The operator of such unit, in

addition to any other right provided by the pooling order or orders of the Commission, shall have a lien on the mineral leasehold estate or rights owned by the other owners therein and upon their shares of the production from such unit to the extent that costs incurred in the development and operation upon said unit are charge against such interest by order of the Commission or by operation of law. Such liens shall be separable as to each separate owner within such unit, and shall remain liens until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order. The Commission is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to production from such well which would be received by the owner or owners for whose benefit the well was drilled or operated, after payment of royalty, until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in said unit.

For the purpose of this section, the owner or owners of oil and gas rights in and under an unloosed tract of land shall be regarded as a lessee to the extent of a seven-eighths (7/8) interest in and to said rights and a lessor to the extent of the remaining one-eighth (1/8) interest therein. Should the owners of separate tracts or interests embraced

within a spacing unit fail to agree upon a pooling of their interests and the drilling of a well on the unit, and should it be established by final, unappealable judgment of a court of competent jurisdiction that the Commission is without authority to require pooling as provided for herein, then, subject to all other applicable provisions of this act, the owner of each tract or interest embraced within a spacing unit may drill on his separately owned tract, and the allowable production therefrom shall be that portion of the allowable for the full spacing unit as the area of such separately owned tract bears to the full spacing unit. In the event a producing well or wells are completed upon a unit where there are, or may thereafter be, two or more separately owned tracts, each royalty interest owner shall share in all production from the well or wells drilled within the unit, or in the gas well rental provided for in the lease covering such separately owned tract or interest in lieu of the customary fixed royalty, to the extent of such royalty interest owner's interest in the unit. Each royalty interest owner's interest in the unit shall be defined as the percentage of royalty owned in each separate tract by the royalty owner, multiplied by the proportion that the acreage in each separately owned tract or interest bears to the entire acreage of the unit.

TITLE 52 O.S § 570.9

Production rights of owner - ownership and payment of proceeds - Working interest owner's rights, duties and liability-Effect of act A. Each owner entitled to produce shall at a minimum have the right to produce separately its proportion interest in monthly production, subject to balancing restriction created by statute, rule, agreement or operation of law; provided however, no provision of the Production Revenue Standards Act shall create a new right for any owner to produce in excess of its proportionate production interest share of the total recoverable reserves from a well. As used herein, an owner is entitled to produce when by right of contract, lease, mineral ownership, Corporation Commission order or operation of law, such owner has acquired or retained a current right to separately contract for dispose of or sell oil or gas from a well. Nothing in the production Revenue Standards Act shall prevent any owner having the right to take production in kind, including a royalty interest owner, from so taking its share of production in kind or create a right to take in kind or use production, which right did not previously exist.

B. Except as otherwise provided by statute, rule, agreement or operation of law proceeds from production, after deduction of royalty proceeds, shall be separately owned by the producing owner and any subsequently created interests attributable to the interests of such owner. A working interest owner shall be responsible for payment and reporting to any subsequently created interest which burdens its working interest.

C. All rights burdens, duties and undertaking attributable to working interest other than the duty of pay royalty proceeds shall remain with such working interest and shall not be communitized pursuant to the Production revenue Standards Act.
D. Notwithstanding any other provisions of the Production Revenue Standards Act. Andy working interest owner that pays or cause to be paid royalty proceeds for gas production in accordance with the production Revenue Standards Act Valued according to the terms of such working interest owner's lease shall be relived from all liability to royalty interest owners for any further payment of proceeds from such production.

TITLE 52 O.S§570.14

Jurisdiction of dist courts - Rulemaking power Corporation Commission - Right of action of injured owner and costs of suit-Statute of limitations

A. The district courts within this state shall have the sole and exclusive jurisdiction to determine the entitlement of any owner in a well to:

1.Its share of proceeds from production; or

2.Damages, interest, court costs, attorneys' fees or allowable litigation expense incurred as a result of the violation of this act.

APPENDIX 1.5

[Record pg 181] APPEAL (Administrative) filed August 7,2000

Pg 1, ¶3 No part of this Appeal can be deemed a waiver of any right, Privilege or Immunity secured by the Constitution of the United States of America; the Constitution of the United States of Oklahoma; nor any Statutory Rights or entitlements.

Pg. 1 ¶5 This case reflects a dispute which is private in nature and does not affect public rights within the jurisdiction of the Commission. Article 7, §7, Oklahoma Constitution.

Pg. 1 ¶6 The report does not recognize the difference between a strict Constitutional case and other cases dealing with flexible contractual law and matters of private rights. Article 9, §34, ¶2, Oklahoma Constitution.

Pg. 1¶7 The Report does not recognize that this case has specifically, timely and continually assertions of all Rights, and therefore, waiver of none, entitling this owner to full constitutionally mandated protections.

Pg. 3 [Record 183] ¶3 In its normal state, a created body under the State Constitution, Article 9 §§15-34, the commission has no jurisdiction over the private rights whatsoever. No jurisdiction over matters of profit sales amounts, bonus amounts, transfer of risk, pay cost or loose some interest, etc.. The Commission has no jurisdiction over matters of private rights nor any other justiciable matter. Article 7, §7, Oklahoma Constitution; LECK vs CONTINENTAL OIL CO., supra; ATLANTIC, supra, at 1096-1097.

Pg. 3 ¶6 The commission has no jurisdiction to cause benefit to a "private company, person or entity" any profit, change of risk, sale prices, bonus amounts, cause a lease status, etc.. Without waiver (Article 2, §23, Okla. Const.) the Commission has no authority over any matter or dispute which is purely private in which the public interest in the common source of supply are not involved.

Pg. 3 ¶8 Constitutional mandate is dominant over any "private rights" findings of the Commission or case law to the contrary. Article 1, §1, Article 9, §34, ¶2, Okla. Const.; U.S. Const., VI, ¶2.

APPENDIX 1.5 (Cont)

PETITION IN ERROR – IN THE SUPREME COURT OF THE STATE OF OKLAHOMA Case No. 95,878

BRIEF

Pg. 4 ¶2 This case, the correlative rights owner reserved and asserted ALL Constitutional and jurisdictional rights prior to commission sitting in its relieved jurisdictional status outside Article 7, §7; Article 2, §23; Article 9, § 34, ¶2 Oklahoma Constitution, over matters of private rights which public interests in common source of supply are not involved. SAMSON RESOURCES CO. vs CORP. COM'N, 702 P. 2d, 19, 23. (Record, page 158.)

Pg. 6 ¶3 It is an undisputable fact that mineral ownership/correlative rights are Constitutionally protected for the full length of the well unless waived. ATLANTIC RICHFIELD CO. vs TOMLINSON, 859 p.2d 1088, 1095; WARD vs CORPORATION COMMISSION, 501 p.2d 503, 507-508; THOMPSON vs CONSOLIDATED GAS UTILITIES CORP., 300 U.S. 55, 57s. ct. 364, 81 L.ED. 510, 523-524; Article 2, §23, Oklahoma Constitution; Amendment 14, U.S. Constitution.

REPLY BRIEF

Pg. 1 ¶3 No part of the Reply brief can deemed a waiver of any Right, Privilege or immunity secured by the Constitution of the United States of America; the Constitution of the State of Oklahoma; nor any state created Statutory Rights or entitlements; an the undersigned continually asserts all Rights at all times and waives none at any time unless expressed in writing.

Pg. 2 ¶4 "Correlative rights" is the term used to specifically define Petitioner's proportion of constitutionally protected mineral ownership in the Common Source of Supply(s). See SAMON RESOURCES CO. VS CORP. CON'N 702 P.2d 19, 22 [1]; Article II, 23 Okla. Const..

Pg. 3 ¶2 Petitioner is entitled to remain clothed with Constitutional Protections for entire length of any activity of production involving petitioner's Correlative Rights in the Common Source of Supply(s). Article II, 23, Okla. Const.

PETITION FOR WRIT OF CERTIORARI

Pg. 1 ¶2 This Petition can not be deemed as waiver of any right, Whatsoever, including all State and Federal Constitutional Rights, Privileges and Immunities Previously and Continuously asserted by Petitioner.

Pg. 2 ¶2 Legislation has mandated that the Oklahoma Corporation Commission (commission) has zero authority over any private matter, right, issue or question regarding entitlement of any owner to share from gross production. Title 52 O.S.

§570.14 (A); Title 52 O.S. §8 7.1; Article 2 §23, Okla. Const..

Pg. 2 ¶3 In case(s) where constitutional protection have NOT been waived, Legislation further mandates specific outcome and limitations upon commission regarding any order in which correlative and gross production rights are issue. Legislation mandates specifically that the Commission's authority stops upon the point at which "until paid" has been satisfied from the non-drilling owner's interest to the drilling person(s). Title 52 O.S. §87.1(e)

Pg. 5 ¶3 Pertinent portions of the Legislative mandate (hereafter, referred to as "specifically authorized to provide until paid" mandated clause), in case where the record reflects that the Commission has no grant to extend its administrative authority over any private matter, issue, right or question, and/or, where the non-drilling owner waived no rights including Article 2, §23, Okla. Const.; Article 9, § 34 ¶2, Okla. Const.; specifically expresses as follows: TITLE 52 O.S. §87.1 (e).

> The Commission specifically authorized to provide that the owner or owners drilling, or a well for the benefit of all shall be entitled to production from such well which would be received by the owner or owners for whose benefit the well was drilled or operated, after payment of royalty until the owners or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such

dispute. No part of the production or proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in the said unit.

REPLY TO "ANSWER TO PETITION FOR WRIT OF CERTIORARI"

Pg 1, ¶2 This Petition can not be deemed as waiver of any right, and therefore, all reservations are continually asserted and reserved.

Supreme Court, U.S.
FILED
MAY 23 2002
OFFICE OF THE CLERK

No. 01-1566

In The
Supreme Court of the United States

LINDA C. HAWKINS, TRUSTEE,
HAWKINS FAMILY TRUST,

Petitioner,

v.

VASTAR RESOURCES, INC.;
OKLAHOMA CORPORATION COMMISSION,

Respondents.

On Petition For A Writ Of Certiorari To The Oklahoma Supreme Court

RESPONDENT VASTAR RESOURCES, INC.'S, BRIEF IN OPPOSITION

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RESTATEMENT OF THE QUESTIONS PRESENTED

Whether the forced pooling procedure in Oklahoma pursuant to 52 OKLA. STAT. § 87.1 (2001) is constitutional under the Constitution of the State of Oklahoma and the Constitution of the United States.

Whether Petitioner's mineral interest may be force pooled in a drilling and spacing unit without her consent or waiver of her rights.

Whether Petitioner must pay her proportionate share of costs of the proposed oil and gas well in order to perfect an election to participate in the proposed well.

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

Effective December 31, 2001, Respondent, Vastar Resources, Inc., merged with and into Amoco Production Company, and the surviving corporation's name was changed to BP America Production Company, a Delaware corporation. BP America Production Company is ultimately a wholly owned subsidiary of BP p.l.c. whose stock is publicly traded on the New York Stock Exchange.

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RULES

SUP. CT. R. 10 3

RESPONDENT'S BRIEF IN OPPOSITION

RESTATEMENT OF THE CASE

On April 17, 2000, Respondent, Vastar Resources, Inc., ("Vastar") filed an application with the Oklahoma Corporation Commission ("Commission") to require the pooling of the working interests[1] of oil and gas owners in sixteen separate common sources of supply of oil and gas in the 640-acre drilling and spacing units formed therefor in Section 7, Township 4 North, Range 20 East of the IM, Latimer County, Oklahoma. The process of requiring the pooling of such working interests is referenced within the regulatory and statutory framework as "forced pooling." Petitioner, Linda Hawkins, individually and as Trustee for the Hawkins Family Trust (collectively, "Hawkins"), formally protested Vastar's application to pool her working interest.

At the hearing before the Commission's Administrative Law Judge ("ALJ"), Vastar's expert witness testified that Vastar had attempted, but was unable, to reach an agreement with Hawkins on pooling her interest. Vastar had offered Hawkins the opportunity to participate in drilling the proposed oil and gas well by paying her proportionate share of the cost of the proposed well. In lieu of participating as a working interest owner in the well, Vastar offered Hawkins a choice of three different combinations of cash bonus and royalty payments. Hawkins refused any of the options offered by Vastar.

---

[1] The owner of a working interest has the right to exploit the minerals on the land. HOWARD R. WILLIAMS & CHARLES J. MEYERS, OIL AND GAS TERMS 1806 (7th ed. 1987).

At the hearing before the ALJ, Hawkins did not dispute the testimony of Vastar's witness. Instead, Hawkins argued that the Commission had no jurisdiction to force pool her mineral interest without her consent. Hawkins suggested that pooling her mineral interest involved "purely private matters in which public interests are not involved."

The ALJ issued a report recommending that Hawkins' mineral interest be force pooled in accordance with the various options offered to her by Vastar. In her report, the ALJ summarized and rejected Hawkins' legal arguments, noting that the Commission had previously rejected substantially the same arguments in several other proceedings in which Hawkins had been a party. Hawkins' appeal of the ALJ's report was referred to the Commission's Oil and Gas Appellate Referee. The Appellate Referee affirmed the ALJ's report. The Commission adopted the findings and recommendations of the ALJ, as recommended by the Appellate Referee, and issued an order pooling Hawkins' mineral interest.

Hawkins appealed the Commission's pooling order. The Court of Civil Appeals of the State of Oklahoma unanimously affirmed the Commission's pooling order. Hawkins' Petition for Writ of Certiorari to the Oklahoma Supreme Court was denied without opinion.

Hawkins now seeks to appeal from the Oklahoma Supreme Court's decision denying Hawkins' Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I. HAWKINS HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." SUP. CT. R. 10. "A petition for a writ of certiorari will be granted only for compelling reasons." *Id.* Hawkins has not presented any compelling reason for this Court to exercise discretionary jurisdiction over her appeal of the Oklahoma Supreme Court's decision denying her Petition for Writ of Certiorari.

II. THE COMMISSION'S POOLING ORDER IS A CONSTITUTIONAL EXERCISE OF THE COMMISSION'S AUTHORITY.

In Oklahoma, the forced pooling procedure is provided for in 52 OKLA. STAT. § 87.1 (2001) ("Section 87.1"). Pursuant to Section 87.1(e):

> When two or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to

> pool and develop their lands in the spacing unit as a unit.

52 OKLA. STAT. § 87.1(e) (2001).

While it is somewhat difficult to follow the legal argument presented by Hawkins in her Petition, it appears that Hawkins' main premise is that it is unconstitutional for the Commission to force pool her mineral interest without her consent. Hawkins suggests that she has the constitutional right *not* to be force pooled and that the only way in which the Commission has the jurisdiction to enter a pooling order affecting her oil and gas interests is with her consent. Hawkins further suggests that without her consent to be pooled, thereby conferring jurisdiction on the Commission, she is entitled to enjoy the benefits associated with participating in the proposed oil and gas well without paying her share of the costs of drilling, completing, and equipping the well up front. Hawkins seems to contend that Vastar should be required to bear the expense and risk of developing her mineral interest. Hawkins further argues that if the proposed well is productive, her share of well costs may be deducted from the production proceeds allocated to her interest.

In this case, Hawkins contends that the Commission's pooling order is unconstitutional and beyond the jurisdiction of the Commission because she did not waive her constitutional rights nor consent to the pooling order so as to confer jurisdiction on the Commission. Hawkins asserts that without her waiver and consent, the Commission's pooling order cannot effectively transfer her working interest to Vastar because such transfer would be a constitutionally prohibited taking of private property for private use.

The constitutionality of forced pooling has been settled by the Oklahoma Supreme Court for many years. Oklahoma law is clear that private property interests must yield to the greater interests of the State in the conservation and development of its natural resources, including the entry of pooling orders affecting such private property interests, on terms that are just and reasonable and will afford owners the opportunity to recover or receive without unnecessary expense their just and fair share of the oil and gas. Contrary to Hawkins' claims, the constitutionality of forced pooling has never been based on whether the owner being pooled waives his or her constitutional rights and consents to the pooling proceeding, so as to vest the Commission with proper jurisdiction.

The Commission's pooling order is constitutional and in full compliance with the requirements of applicable Oklahoma law.

A. Forced Pooling is Constitutional.

In *Anderson v. Corporation Comm'n*, 327 P.2d 699 (Okla. 1957), the Oklahoma Supreme Court considered a challenge to the constitutionality of forced pooling under 52 OKLA. STAT. § 87.1 (1951). In *Anderson*, the unleased mineral interest owner (Anderson) asserted that the subject pooling order, entered pursuant to Section 87.1, violated both the State and United States Constitutions because it amounted to a taking of private property for private use without due process of law.

Rejecting this argument and upholding the constitutionality of the statute, the Oklahoma Supreme Court explained that petroleum and petroleum products are the most important of natural resources. *Anderson*, 327 P.2d

at 701. In order to minimize overproduction and waste for the benefit of the general public, the State, through its police power, had to curtail an individual's rights to develop and produce petroleum products. *Id.* Well spacing laws were therefore enacted to curtail drilling, which curtailment often resulted in serious inequalities and inequities between owners. In order to protect the correlative rights of the owners, unitization and pooling procedures were established to ensure that the State's exercise of the police power in the conservation of natural resources would not effect too serious an unbalancing of correlative rights. *Id.* The *Anderson* court concluded that the pooling order in question was authorized by Section 87.1 as a necessary and integral part of securing the correlative rights of the parties. *Id.*

The *Anderson* court recognized that the Oklahoma Supreme Court had previously, on several occasions, held the unitization and pooling statutes to be constitutional. *Id.* at 702. Referring to previous decisions, the court stated:

> All property is held subject to the valid exercise of the police power; nor are regulations unconstitutional merely because they operate as a restraint upon private rights of person and property or will result in loss to individuals. The infliction of such loss is not a deprivation of property without due process of law; the exertion of police power upon subjects lying within its scope, in a proper and lawful manner, is due process of law.

Id. (quoting *Patterson v. Stanolind Oil & Gas Co.*, 77 P.2d 83 (Okla. 1938) and *Croxton v. State*, 97 P.2d 11 (Okla. 1939)).

The *Anderson* court, in concluding that the pooling order was not an unconstitutional taking of property, stated:

> The order complained of did not constitute a taking of property of Anderson in any manner. It granted him the right to participate in the production from a well on Ellison's property, but on condition that certain requirements were met. The limitation of one well to eighty acres was a proper exercise of the police power in furtherance of the conservation of natural resources. That he was allowed to share in the production or to receive a bonus instead of that participation was a grant to him at the expense of Ellison merely because of the recognition of correlative rights. On the other hand, Ellison was not deprived of anything because he was granted the right to drill the only well which would be permitted on the eighty acre drilling unit upon condition that Anderson . . . could participate in the production upon payment of his part of the cost. Both were forced to co-operate for the benefit of both and for the protection of the public generally.

Id. at 702-03.

Furthermore, in discussing the constitutionality of the pooling statute, the *Anderson* court quoted the United States Supreme Court in *Hunter Co. v. McHugh*, 320 U.S. 222 (1943), in which this Court stated:

> A state has constitutional power to regulate production of oil and gas so as to prevent waste and to secure equitable apportionment among landholders of the migratory gas and oil underlying their land, fairly distributing among them the costs of production and of the apportionment.

Id. at 703. Based on these foregoing authorities, the *Anderson* court reaffirmed the constitutionality of pooling as a valid exercise of the State's police power pursuant to both the State and United States Constitutions. *See also Kardokus v. Walsh*, 797 P.2d 322, 323 (Okla. 1990); *Spiers v. Magnolia Petroleum Co.*, 244 P.2d 852 (Okla. 1951); *Palmer Oil Corp. v. Phillips Petroleum Co.*, 231 P.2d 997 (Okla. 1951); *Croxton v. State*, 97 P.2d 11 (Okla. 1939); *Patterson v. Stanolind Oil & Gas Co.*, 77 P.2d 83, 89 (Okla. 1938).

The Oklahoma Supreme Court has consistently upheld the constitutionality of forced pooling pursuant to Section 87.1. Hawkins fails to explain how any legal authority cited in her Petition would support a position contrary to *Anderson*. Mere assertion of legal principles, even if otherwise correct, is of no avail if circumstantially irrelevant. *Anderson*, therefore, is dispositive of Hawkins' jurisdictional and constitutional contentions regarding the Commission's power to require her to pool her oil and gas interest with that of others in drilling and spacing units.

B. The Commission May Force Pool Hawkins' Mineral Interest Without Her Consent or Waiver of Her Rights.

Hawkins appears to assert that because her mineral interest constitutes a private right, the Commission is without authority or jurisdiction under Section 87.1(e) to pool her mineral interest absent her consent to the Commission's jurisdiction and waiver of her rights. Hawkins appears to argue that once an owner consents to a pooling proceeding so as to confer jurisdiction on the Commission under Section 87.1(e), the Commission may enter a pooling order affecting such owner's interest. Hawkins, however,

misunderstands the nature of her mineral interest and the authority of the Commission vis-á-vis her mineral interest.

The Commission is a tribunal of limited jurisdiction, and it has only such jurisdiction and authority as is expressly or by necessary implication conferred upon it by the Constitution and statutes of the State of Oklahoma. *Kingwood Oil Co. v. Hall-Jones Oil Corp.*, 396 P.2d 510, 513 (Okla. 1964). The basis for the enactment of Oklahoma's oil and gas conservation laws, including Section 87.1, is to prevent waste and to protect correlative rights. *Miller v. Corporation Comm'n*, 635 P.2d 1006, 1007 (Okla. 1981); *Inexco Oil Co. v. Corporation Comm'n*, 628 P.2d 362, 364 (Okla. 1981). The term correlative rights involves the relative rights of owners in a common source of supply to take oil or gas by legal operations limited by duties to the other owners not to injure the common source of supply, and not to take an undue proportion of the oil and gas. *Kingwood*, 396 P.2d at 512.

In *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049 (Okla. 1984), the Oklahoma Supreme Court explained that the purpose of 52 OKLA. STAT. § 81 *et seq.* [now 52 OKLA. STAT. § 86.1 *et seq.*], is the conservation of oil and gas. *Tenneco*, 687 P.2d at 1052. Under the statutes, the Commission is vested with the duty to prohibit and control waste and protect correlative rights. *Id.* The entry of a pooling order pursuant to these statutes is a function of the Commission that is within the realm of the public rights to be protected by these statutes. *Id.* A forced pooling order represents the interest of consumers and mineral interests and prevents the "dog in the manger" attitude that would deny economic development. *Id.*

The Oklahoma Supreme Court addressed the Commission's power to force pool mineral interests under Section 87.1 in *Samson Resources Co. v. Corporation Comm'n*, 702 P.2d 19 (Okla. 1985). In *Samson*, the court recognized that the power to protect correlative rights is limited by the terms of Section 87.1. *Samson*, 702 P.2d at 22. Under Section 87.1(e), the Commission is provided various avenues for the exercise of the Commission's jurisdiction over the public interest in correlative rights. *Id.* Thus, in a drilling and spacing unit in which owners are not able to agree regarding voluntary development, the Commission is empowered under Section 87.1(e) to pool the owners' interests and to monitor certain terms and conditions of the contract imposed on the parties through a pooling order, thereby allowing an orderly development of the common source of supply. *Id.* at 23.

The Oklahoma Supreme Court has upheld on numerous occasions the jurisdiction of the Commission to force pool mineral interests in a drilling and spacing unit pursuant to Section 87.1(e). The Commission's pooling power is grounded in its duty to prevent waste and to protect correlative rights. Contrary to Hawkins' assertion, the Commission's ability to force pool her mineral interest is not dependent on her consent to be pooled, or a waiver of an alleged right not to be pooled. Under Hawkins' theory, the ability of the Commission to protect public rights in the development and production of oil and gas through the entry of a pooling order under Section 87.1(e) is solely dependent upon whether the particular owner consents to be pooled and confers jurisdiction on the Commission. In other words, Hawkins contends that the Commission may exercise the police power of the State of Oklahoma under Section 87.1(e) to force pool an owner's

interest if, and only if, the owner agrees to it. Under Hawkins' theory, a mineral owner who does not consent or agree to a pooling order is beyond the Commission's jurisdiction. Hawkins' theory is fundamentally flawed because it is contrary to the very purpose of Section 87.1(e).

Hawkins' mineral interest clearly falls under the jurisdiction of the Commission pursuant to Section 87.1(e), regardless of any consent or waiver by Hawkins. The Commission's authority to issue the pooling order in this case is unquestionably proper.

III. THE POOLING ORDER REQUIRING HAWKINS TO PAY HER PROPORTIONATE SHARE OF COSTS IS PROPER.

As a condition to perfecting an election to participate in the proposed well, the pooling order requires Hawkins to pay, or provide satisfactory security for the payment of, her proportionate share of the estimated cost of the proposed well within 20 days of the date of the order. Based on Hawkins' interpretation of Section 87.1(e), she contends that because she has not consented to the pooling, there can be no sale or transfer of her mineral interest under the pooling order and she is entitled to have her proportionate share of the well costs deducted from her proportionate share of the revenue from production, if any, from the proposed well. Hawkins appears to further contend that once Vastar has recovered Hawkins' share of the costs of the proposed well from production revenues, Hawkins would then receive her proportionate share of the revenues from the well, preventing Vastar, as the risk-taker, from making any profit from her interest.

Hawkins' reading of Section 87.1 is misguided and would require Vastar to bear the entire risk of loss in connection with the proposed well in regard to Hawkins' interest. This is exactly the result Section 87.1(e) seeks to prevent. Hawkins' interpretation of Section 87.1(e) is simply not supported by Oklahoma law.

A. Section 87.1(e) Does Not Require Vastar to Bear the Risk of Loss as to *Hawkins'* Interest.

In *Ranola Oil Co. v. Corporation Comm'n*, 752 P.2d 1116 (Okla. 1988), the Oklahoma Supreme Court in reviewing a pooling order was faced with the issue of whether the acceptance of a bonus in lieu of participation in an oil and gas well operated as an assignment and prevented the bonus taker from participating as a matter of right in subsequent wells. In discussing the purpose of a pooling order entered under Section 87.1, the court stated as follows:

> The purpose of forced pooling is to equalize the risk of loss by forcing all of the oil and gas interest owners to choose in advance whether they will share in both the benefits and the risks of oil and gas exploration.
>
> . . . .
>
> By accepting the bonus, Wilver elected not to take the risk of reducing to capture the oil and gas in the Mississippi Lime formation. To allow Wilver's successor in interest to reap the rewards of development while avoiding the risks would be inequitable.

> On the other hand, the operator assumed the risk of capture. If the original well proved to be a dry hole or did not produce in paying quantities, the participants alone assumed that loss. Since the original well was successful, the participants should be permitted to reap the benefits of their venture in the original well and in the three increased density wells. Furthermore, to permit Ranola to retroactively participate in the three increased density wells would divest the operator's vested interest in violation of substantive due process.

Ranola, 752 P.2d 1119-1120.

The *Ranola* court further stated that when the owner of a mineral interest is force pooled and elects to take a bonus in lieu of participating in the cost of drilling the well, such election acts as a sale of the owner's leasehold rights. *Id.* at 1118-1119. The court concluded that the exercise of Section 87.1 in such a manner was not unconstitutional but was a proper exercise of the police power. *Id.* at 1119. Once the period for the elections designated by the pooling order has passed, the property interests of the affected parties become vested and once vested, are not vulnerable to extinguishment. *Id.* The court explained that acceptance of the cash bonus acted as an assignment to the operator of the mineral owner's exploratory rights in the formation covered by the pooling order. *Id.*

The court concluded that once the operator under the pooling order had acquired the interests from the mineral owner and had assumed the risk of the oil and gas exploration, the operator should reap the rewards of the risk-taking. *Id.* at 1120. It would be inequitable and unreasonable to allow the mineral owner who had avoided

the risk-taking to reap any of the rewards of the development. *Id.*

The court in *Ranola* relied on the analysis set forth in *Amoco Production Co. v. Corporation Comm'n*, 751 P.2d 203 (Okla. Ct. App. 1986) (adopted by the Oklahoma Supreme Court, December 16, 1987). In *Amoco,* the court recognized that an election not to participate under a pooling order transfers by operation of law the right to drill of the affected owner in the applicable drilling and spacing unit. *Amoco,* 751 P.2d at 206. The measure of compensation for the forcibly pooled minerals is their "fair market value." *Id.* The court commented that it was not reasonable to strip a prudent operator of the property rights he had purchased under the pooling order. *Id.* at 207. Once the unit is pooled and the time for elections has passed, the interests become vested and beyond the Commission's reach to modify, and such rights are no longer vulnerable to extinguishment. *Id.*

The *Amoco* court further recognized that once a party had acquired the interest under a pooling order and had assumed the risk of development in connection therewith, such party was an original risk-capital investor. *Id.* Once the operator relies on the unit as created by the Commission, new elections under the pooling order deprive the original risk-capital investors of rights earned by taking the risk of the initial well. *Id.* An order that would grant a non-risk-capital investor a second election under a pooling order would constitute a deprivation of the property rights of the original risk-capital investors. *Id.* The court clearly recognized that the effect of a pooling order is to allocate the risk prior to development occurring and that once the risk of development is allocated under the pooling order, the parties assuming the risk, being the original

risk-capital investors, should reap the benefits of the risk-taking and retain the rights earned by such risk-taking. *Id.*

Hawkins' misguided interpretation of Section 87.1(e) would not equalize the risk of loss prior to development of the drilling and spacing units. Rather, Vastar would assume all of the risk of loss in regard to Hawkins' mineral interest and Hawkins would reap the rewards of the development while avoiding any risk. Under Hawkins' theory, without her consent to the pooling, she does not have to pay any of the well costs. Vastar must instead recover such costs from Hawkins' share of production which may be insufficient. Once Vastar recovered Hawkins' costs, Hawkins would receive the production from the well and recoup the benefits of the risk-taking by Vastar.

Under Hawkins' theory, Vastar would be the original risk-capital investor, but would be deprived of the rights earned under the pooling order by taking the risk of the proposed well. Hawkins' interpretation of Section 87.1(e) is diametrically opposed to the very purpose and intent of a pooling order and would result in the very thing that a pooling order is intended to prevent. In fact, the position asserted by Hawkins is the very result that would occur if Vastar had not sought a pooling order covering her interest in the drilling and spacing units.

The Commission's pooling order in this case provides the mechanism for fairly and properly equalizing the risk of loss as to the initial unit well by requiring Hawkins to elect whether she will be an original risk-capital investor by participating and assuming a portion of the risk of loss, or whether she will assume no risk of loss and receive the specified royalty (and any corresponding cash bonus), with

her working interest passing to Vastar under the pooling order. If Hawkins elects to participate as an original risk-capital investor, she must perfect such election by paying or providing satisfactory security for the payment of her share of the well costs within 20 days from the date of the pooling order.

B. Hawkins Must Pay, or Provide Security for Payment of, Her Proportionate Share of Costs Prior to Drilling.

Section 87.1(e) provides that a pooling order shall be upon terms and conditions as are just and reasonable, and will afford each owner in the applicable unit the opportunity to recover or receive without unnecessary expense such owner's fair share of the oil and gas. The statute further provides that a pooling order shall make definite provisions for the payment of the cost of the development and operation and that if there is a dispute relative to such costs, the Commission shall resolve such dispute by determining the proper costs.

Implicit in the language of Section 87.1(e) is the authority of the Commission to include in a pooling order a provision requiring an owner, who elects to participate as a working interest owner, to pay or provide satisfactory security for the payment of the owner's proportionate share of the well costs within a specified time period in order for the owner to perfect the election to participate. Pooling orders routinely give owners the choice of agreeing to participate by paying the owner's proportionate share of the well costs or furnishing security therefor within several days of the order. *See, e.g., Crest Resources and Exploration Corp. v. Corporation Comm'n*, 617 P.2d 215, 218 (Okla. 1980); *Home-Stake Royalty Corp. v. Corporation*

Comm'n, 594 P.2d 1207, 1207-10 (Okla. 1979); *Coogan v. Arkla Exploration Co.*, 589 P.2d 1061, 1062 (Okla. 1979).

In *Anderson v. Corporation Comm'n*, 327 P.2d 699 (Okla. 1957), the Oklahoma Supreme Court addressed an argument very similar to the argument presented by Hawkins in this case. In *Anderson*, the plaintiff contended that his proportionate share of the well costs could be recovered under a pooling order only by deducting such costs from production if the well proved to be productive. In analyzing this issue, the court discussed cases involving municipal zoning ordinances controlling drilling. These ordinances were the predecessors to the conservation laws in Oklahoma. The *Anderson* court found that the relationship among the applicable parties existing by reason of the municipal zoning ordinances was identical to the relationship among the owners in a drilling and spacing unit under Section 87.1. *Anderson*, 327 P.2d at 702. The court noted that in *Phillips Petroleum Co. v. Davis*, 147 P.2d 135 (Okla. 1944), the Oklahoma Supreme Court had remarked:

> The rights of non-leasing owners of lots are entirely the creations of the ordinance. The purpose and intent of the ordinance is to require lot owners to bear his proportionate share of the expense in order to participate in the production. If the owner leases his lot, he is thereby relieved from paying his part of the expenses. It is the intent of the ordinance that he pay or secure payment of his part of the expense in order to share in the whole production. *In equity, he ought not to be permitted to stand by and see the operator take all the chances of failure and come in and pay or offer to pay only after the venture has proved successful.*

Id. (emphasis added).

Furthermore, in *Anderson*, the court relied on the analysis set forth in *Amis v. Bryan Petroleum Corp.*, 90 P.2d 936 (Okla. 1939). In *Amis*, the Oklahoma Supreme Court construed a city ordinance regulating oil and gas development and production, similar to Section 87.1. The ordinance authorized the board of adjustment to make orders it found equitable and just regarding allocation of production to unit ownership. The plaintiff objected to the board's order requiring him to post bond as a condition to the right to participate in the working interest. The court determined the bond was proper, reasoning:

> If the board in the exercise of its equitable powers thought it proper to allow the protestant to participate in the working interest without becoming obligated upon the operators' bond then as an equitable principle it could require as a condition precedent to the exercise of that privilege a bond to reimburse the operators for the expense incurred by them in carrying him for an interest in the well; and a time limit within which to post the bond was entirely proper. He must elect whether he shall accept the bonus or post bond and participate in the working interest. Though the ordinance may not specifically authorize the board to require the bond in question, its order in that respect was justified as a proper exercise of its equitable powers to protect and safeguard the rights of the parties. . . . If he fails to post bond in the time allowed by the board or court on the appeal he will be presumed to have elected to accept the bonus. Here the protestant failed to post bond and failed to supersede the judgment of the district court. He is entitled to the bonus and royalties as fixed by the judgment, but may not now post bond and participate in the working interest.

Amis, 90 P.2d at 939-40. The foregoing authorities clearly show that the Commission under Section 87.1(e) is authorized to include in a pooling order a requirement that a party, who has elected to participate as a working interest owner, pay or provide satisfactory security for the payment of such party's share of the well costs in order to perfect and preserve the right to so participate.

Hawkins' interest is not the only one to be protected under the Commission's pooling order. Section 87.1 requires that a pooling order "be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas." 52 OKLA. STAT. § 87.1(e); *Amoco Production Co. v. Corporation Comm'n*, 751 P.2d 203, 206-07 (Okla. Ct. App. 1986) (adopted by the Oklahoma Supreme Court, December 16, 1987). The statute also requires that the pooling order "make definite provisions for the payment of cost of the development and operation." 52 OKLA. STAT. § 87.1(e). Vastar is an "owner" covered and protected by Section 87.1(e). Hawkins' construction of Section 87.1 would result in Vastar bearing the entire risk and expense attributable to Hawkins' interest and would impose upon Vastar unreasonable and unnecessary expenses, denying Vastar an opportunity to recover or receive its fair share of the oil and gas without unnecessary expense. Hawkins' construction of Section 87.1 is contrary to the very wording of such section. Furthermore,

Hawkins' construction would result in waste which the Commission is required to prevent.[2]

Setting aside the fact that Oklahoma courts have consistently rejected Hawkins' interpretation of Section 87.1, Hawkins' arguments make no logical or practical sense. If a respondent to a forced pooling order is allowed to "ride the well down" or be carried for an interest in the well at the expense of those proposing to drill, Section 87.1(e) would be meaningless. Those parties otherwise proposing to drill will not be able to justify the tremendous increase in risk for the same share of reserves. Wells which would otherwise be drilled will not be drilled and hydrocarbons will be left in the ground. Indeed, the very reason that the statute is commonly called the "forced pooling" statute is that it equalizes the risk of loss by forcing owners to make a choice: either put up their share of costs, or accept a fair market value alternative. Without the Commission's ability to force pool owners, an ability long recognized by Oklahoma law, neither Oklahoma's oil and gas industry nor its mineral owners will be able to

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[2] Waste consists of unreasonable production or unreasonable nonproduction of oil and gas. *Storck v. Cities Service Gas Co.*, 575 P.2d 1364, 1368 (Okla. 1977). A loss of ultimate recovery is nothing more nor less than waste. *Gilmer Oil Co. v. Corporation Comm'n*, 61 P.2d 22, 24 (Okla. 1936). Underground waste is committed by leaving underground minerals which any prudent operator would not hesitate to drill for. *Application of Peppers Refining Co.*, 272 P.2d 416, 424 (Okla. 1954). If operators were required under Section 87.1 to bear the risk and expense of owners who refuse to pay their proportionate share of costs, such owners would, naturally, adopt a "wait and see" attitude potentially gaining every benefit while suffering none of the risk. The result for the State would be that much of the State's resources would remain forever unproduced, resulting in a waste of valuable natural resources.

receive the benefit of the State's natural resources. This was the very reason the pooling statute was enacted.

The Commission's order pooling Hawkins' mineral interest is a proper exercise of the State's right and obligation to balance and protect the rights and interests of its citizens, mineral interest owners, and to prevent the waste of important natural resources.

CONCLUSION

For the foregoing reasons, Respondent, Vastar Resources, Inc., asks that this Court deny the Petition.

Respectfully submitted,

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